IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 1326 of 2007

NEMA RAM
V/S
STATE & ORS.

Mr. PP CHAUDHARY, for the appellant / petitioner

Mr. RK SONI, for the respondent

Date of Order : 12.4.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

This petition has been filed by the petitioner seeking to challenge Annex.4 dated 20th February 2007, whereby the learned trial Court has set aside the petitioner's election to the post of Sarpanch of the Gram Panchayat, Padukhurd. In the petition, the petitioner has also challenged the validity of provisions of Section 19 (gg) and Section 43 of the Rajasthan Panchayati Raj Act, 1994 hereafter to be referred to as the Act, so also of the Rules 80 to 89 of the said Rules. However, when the matter was listed in the Court in the Division Bench on 16.3.2007, challenge to the validity of Section 19(gg) and Section 43 was given up. During course of arguments before me, nothing was submitted regarding validity of the provisions of Rule 80 to 89. In that view of the matter, the controversy remains confined only to challenge the order Annex.4.

The facts are that the private respondent,

hereafter to be referred to as the election petitioner filed an election petition before the learned Court below seeking to challenge the election of the present petitioner. The case in the election petition inter-alia was that the petitioner was elected in the election held on 31st January 2005 and for that purpose he submitted his nomination form but in the declaration annexed therewith the petitioner did not disclose the pendency of criminal case No.19.2001 in the Court of Additional Chief Judicial Magistrate, Merta for the offence under Section 3/7 of the Essential Commodities Act, and the petitioner was disqualified by virtue of provisions of Section 19(gg) of the Act, as the cognizance was taken against the petitioner in the said case on 18.1.2001 and on 2.4.2002 charges had also been framed for the aforesaid offence and the case is pending trial.

The election petition was contested inter-alia on the ground that at the time of scrutiny, the election petitioner did not raise any objection either orally or in writing. Then it was submitted that the charge for which he is being tried does not fall within the mischief of Section 19(gg). Certain other objections were also raised, which, for the present purpose, in view of the forthcoming paragraphs, need not detain me.

The learned trial Court framed various issues, and the relevant are issues No.1, 2 and 4, which relate to the question of disqualification.

It may be observed here that during course of arguments, Annex. 4 was challenged mainly on two grounds, firstly that for attracting mischief of Section 19(gg), the offence with which the petitioner is charged, should be punishable with imprisonment of 5 years or more, meaning thereby, that the offence should be punishable with minimum imprisonment of 5 years, and could be punishable with more term of imprisonment. While, in the present case, for the offence under Section 3/7 of the Essential Commodities Act, the minimum sentence prescribed is only 3 months, though maximum is 7 years, but then since minimum is 3 months, the disability provided in Section 19(gg) is not attracted. Then another submission made is, that a look at the provisions of Section 7 of the Essential Commodities Act shows, that it comprehends two types of offences viz., one which has reference to clause (h) or clause (i) of sub-section (2) of Section 3, and the other category is of any other order, inasmuch as, Section 7 prescribes penalty for comprehending any of the order under Section 3, and in that context provides these two categories, and therein, for the first category of offences, the maximum term for imprisonment prescribed is one year, while it is the second category of offence, the maximum imprisonment is prescribed to be 7 years. With this, it was submitted, that in the charge-sheet Annex.1, it is not disclosed, as to for which part of Section 7, the petitioner is being tried, and in absence of this clarification, simply because the

petitioner is being tried for offence under Section 3/7, it does not necessarily mean, that he is being tried for the offence punishable under the second category, which prescribes the maximum imprisonment of 7 years, and it could very well be for the first part, prescribing maximum of one year, and in that view of the matter, the disability under Section 19(gg) cannot be said to be attracted.

Learned counsel for the respondent, on the other hand, supported the impugned order Annex.4, and submitted that he has submitted a counter-claim, that since only two candidates were contesting, if the petitioner's election is set aside, the election petitioner should be declared elected. Suffice it to say that this relief has been refused by the learned trial Court, and there is no provision for maintaining counter-claim under Art.226 of the Constitution. In that view of the matter, if the election petitioner was aggrieved of Annex.4, he could have filed a separate writ petition.

Therefore, the only controversy that survives for consideration is, as to whether the finding recorded by the learned Courts below on issues No.2 and 4, finding the petitioner to be under disqualification, is sustainable or not on the anvil of the above submissions.

At the outset I may gainfully reproduce Section 19 (gg) here, which reads as under:

> "is under trial in the competent Court which has taken cognizance of the offence and framed the

> charges against him of any offence punishable with imprisonment for five years or more”

Thus, a look at Section 19(gg) shows, that all that is prescribed is, that the person should be under trial in a competent Court which has taken cognizance of any offence, and framed the charges, against him, and the offence should be “punishable” with imprisonment of 5 years or more. Therefore, the precise question relates to the interpretation of the expression “punishable”, i.e. whether the offence should be punishable with the minimum imprisonment of 5 years, or the disability will be attracted even if the offence is punishable with maximum term of imprisonment of 5 years or more?

In this regard, both the learned counsel invited my attention to two judgments of Hon'ble the Supreme Court being Sube Singh & Ors. Vs. State of Haryana & Ors., reported in (1989)1 SCC 235, and other being Bhupinder Singh & Ors. Vs. Jarnail Singh & Anr., reported in (2006)6 SCC 277.

These two judgments have direct bearing on the controversy, inasmuch as, in Sube Singh's case, the person concerned was punished for the offence under Section 302, and the question was, as to whether he is entitled to the benefit of the provisions of Punjab Borstal Act, and on that question, the earlier judgment of two Judges Bench of Hon'ble the Supreme Court was considered, and then the matter was referred to a three Judges Bench, and the three

Judges Bench in Subhash Chand Vs. State of Haryana & Ors reported in (1988)1 SCC 717 held that since Section 302 provides the punishment of death, as well as imprisonment for life, and since Section 2(4) of the Punjab Act provided that the benefit will not be available, in case where the person is punished with an offence punishable with transportation or rigorous imprisonment of life, other than offence punishable with death, and held, that as the offence under Section 302 is also punishable with death, the Punjab Act has no application. Following this decision, in Sube Singh's case, the benefit of the said Act was declined. It was held that punishable carries a meaning "liable to be punished" and it was found, that since the offence under Section 302 is punishable with death, the provisions of the Punjab Borstal Act would not cover an offence under Section 302, and the benefit would not, therefore, be available to the accused convicted for the offence under Section 302 IPC. Then in Bhupinder Singh's case, the Hon'ble Supreme Court was considering the question of applicability of the provisions of Section 167 (2) Cr.P.C. on the anvil of quantum of punishment, inasmuch as, under Section 167(2) maximum permissible period of detention before filing of the challan is 90 days, in cases where the offence is punishable with death or imprisonment of life or imprisonment of not less than 10 years, and 60 days in any other case. In that case, the offence was under Section 304B of I.P.C., and that was punishable with an

imprisonment, which shall not be less than 7 years, but which may extend to imprisonment for life, and considering these provisions it was held, that the 7 years imprisonment is minimum one, while the punishability is prescribed to be imprisonment to life, and it was held, that merely because minimum sentence is provided, that does not mean that the sentence imposable is only the minimum sentence and not the maximum, and therefore, it was held, that the period applicable would be 90 days.

In my view, these judgments are clearly sufficient to negative the contention of the learned counsel for the petitioner, that for attracting the disability under Section 19(gg) the offence should be punishable with the minimum imprisonment of 5 years, and in my view, the disability would be attracted when the offence is punishable with even a maximum period of 5 years, or more, with or without any minimum sentence prescribed.

Then I take the second submission. True it is that in Annex.1, it has not been specified, as to whether the charge is framed under the first part of Section 7(1) or the second part. However, the language of the charge very clearly recites the precise allegations for which the charge is framed, and that being as under:-

> "यह कि प्रवर्तन निरीक्षक डेगाना के द्वारा ग्राम सेवा सहकारी समीति डोडीयाना के स्टॉक रजिस्टर का निरीक्षण करने पर पाया गया कि आपके द्वारा उक्त समीति के कार्यकारिणी सदस्य के पद पर कार्यरत रहते हुए आवश्यक वस्तु केरोसीन, चीनी, व गैंहू का वितरण राशनकार्डधारियों को नहीं कर के रजिस्टरों

में फर्जी इन्द्राज किया गया एवं उक्त वस्तुओं का उपयोग आपने निजी लाभार्थ किया। इसप्रकार आपने राज. खाद्यान व अन्य आवंटन पदार्थ वितरण का विनिमय आदेश 1976 की प्राधिकार पत्र की शर्त नंबर 5, 15 व 17 सी. का उल्लंघन किया है। आपका उक्त क्रत्य धारा 3/7 आवश्यक वस्तु अधिनियम 1955 के तहत दण्डनीय अपराध है जो कि मेरे प्रसंज्ञान में है।"

In my view, none of these allegations fall in any of the four-corners of Section 7(1)(a)(i) read with clause (h) and (i) of sub-section (2) of Section 3. Obviously, therefore, the only other sentence provided is the maximum of 7 years under Section 7(1)(a)(ii). That being the position, I do not find any error in the findings recorded by the learned trial Court on issues No.2 and 4.

Thus, the writ petition has no force and is dismissed summarily.

(N P GUPTA),J.

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